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NORTH DAKOTA
PUBLIC SERVICE COMMISSION

STATE OF NORTH DAKOTA
BEFORE THE PUBLIC SERVICE COMMISSION

Brian P. Kalk — Chairman
Randy Christmann — Commissioner
Julie Fedorchak — Commissioner

In the Matter of the Annual Report to the North Dakota Public Service Commission for Essential Telecommunications Carrier Certification on Behalf of Absaraka Cooperative Telephone Company

Case No.: PU-17-294

REQUEST TO PROTECT TRADE SECRET INFORMATION

INTRODUCTION

Absaraka Cooperative Telephone Company (the "Company") submits this Request to Protect Trade Secret and Confidential Information in conjunction with its Annual Report to the North Dakota Public Service Commission, Essential Telecommunications Carrier Certification ("Annual Report"). The Company requests the information contained in Exhibit A, Item 1, attached to the Company's Annual Report to the North Dakota Public Service Commission ("Commission"), be treated as trade secret, proprietary, commercial and financial information protected from public disclosure pursuant to North Dakota Century Code § 44-04-18 *et seq.*

Consistent with North Dakota Administrative Code § 69-02-09-02, Trade Secret Exhibit A is a separate document, submitted in a sealed envelope marked Trade Secret - Private. Copies of the Annual Report and Public versions of Exhibit A, with the Trade Secret responses to Items 1 and 2 excised have also been filed electronically and by U.S. Mail.

THE TRADE SECRET EXHIBITS

A. Trade Secret Response to Exhibit A, Item 1

Item 1 to Trade Secret Exhibit A contains a description of the amount of high-cost universal service support received by the Company in 2016 and a description of how that support

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was used for the provision, maintenance, or upgrading of the Company's facilities and services. It also includes an estimate of the amount of federal high-cost universal service support the Company anticipates receiving in 2018 and a description of how that support is projected to be used for the provision, maintenance, or upgrading of the Company's facilities and services pursuant to Section 254 of the Telecommunications Act of 1996.

THE CONFIDENTIAL EXHIBITS ARE AFFORDED TRADE SECRET PROTECTION BY THE FCC AND UNDER NORTH DAKOTA LAW

North Dakota's Open Records Law (N.D.C.C. § 44-04-18 *et seq.*) provides that "Except as otherwise specifically provided by law, all records of a public entity [such as the Commission] are public records"[1] and therefore must be made available. The Open Records Law also contains a specific exception – Section 44-04-18.4(1) – which provides a safeguard for confidential information (the "Confidential Exception"). The information in Trade Secret Exhibit A falls within the "otherwise specifically provided by law" exception because its information is treated as confidential by the regulations and orders of the Federal Communications Commission ("FCC"). Moreover, the information in the Confidential Exhibits falls within the statutorily-defined Confidential Exception.

A. The FCC Treats this Information as Confidential

The "term 'law' as used in [N.D.C.C. § 44-04-18(1)] includes federal statutes and applicable federal regulations, as well as state law."[2] The information in Trade Secret Exhibit A, Items 1 and 2, is stated to be confidential by the FCC under 47 C.F.R. §§ 0.457 and 0.459 and its orders.[3] The Commission found previously found that the information in Badlands Cellular of

[1] N.D.C.C. § 44-04-18(1) (emphasis added).
[2] N.D. Op. Atty. Gen. L-32, 1998 WL 1058327 (Mar. 30, 1998).
[3] *See In the Matter of Federal-State Joint Board on Universal Service, Petition of Cingular Wireless, LCC for Designation as an Eligible Telecommunications Carrier in the State of Georgia, Protective Order,* CC Docket No. 96-45, *Order*, DA 07-3627 (rel. Aug. 15, 2007) ¶ 1 (granting a protective order to keep service improvement plan

North Dakota Limited Partnership's Confidential Exhibits A-1, A-2, A-3, and C-1, which is materially similar to Trade Secret Exhibit A, Item 1, is protected under federal regulation.[4] The Company has previously applied for Trade Secret treatment in Case Nos. PU-09-592, PU-10-548, PU-11-461, and PU-12-402. The Commission issued its Order Granting Trade Secret Protection with respect to Case Nos. PU-09-592, PU-10-548 and PU-11-461 on September 27, 2012. Accordingly, the Commission should consider the Company's current Trade Secret Exhibit A, Item 1, to be confidential under the exception in N.D.C.C. § 44-04-18(1) for information "otherwise specifically provided by law" as non-public.

B. The Confidential Exhibit Falls within the Confidential Exception

The Confidential Exception to N.D.C.C. § 44-04-18.4(1) provides as follows:

> (1) Trade secret, proprietary, commercial, and financial information is confidential if it is (2) of a privileged nature and (3) it has not been previously publicly disclosed. (Emphasis and numbering added.)

"Trade secret" is defined as follows:

> Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, technical know how or process, that:
>
> > 1. Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons that can obtain economic value from its disclosure or use; and

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information like that contained in Confidential Exhibits A-1, A-2, and A-3 confidential); *see also In the Matter of Federal-State Joint Board on Universal Service, Corr Wireless Communications, LLC Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama, Protective Order,* CC Docket No. 96-45, *Order,* DA 07-3629 (rel. Aug. 15, 2007); *In the Matter of New Part 4 of the Commission's Rules Concerning Disruptions to Communications,* ET Docket No. 04-35, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 04-188, 19 FCC Rcd. 16830 (rel. Aug. 19, 2004) (explaining why outage information similar to that contained in Confidential Exhibit C-1 is considered confidential for reasons of national security).

[4] *Badlands Cellular of North Dakota Limited Partnership, 2007 High-Cost Universal Service Support Annual Report*, Case No. PU-07-587, *North Dakota RSA No. 3 Limited Partnership, 2007 High-Cost Universal Service Support Annual Report*, Case No. PU-07-588, *North Central RSA 2 of ND Limited Partnership, 2007 High-Cost Universal Service Support Annual Report*, Case No. PU-07-590, *North Dakota 5 - Kidder Limited Partnership*, Case No. PU-07-591; *Northwest Dakota Cellular of North Dakota Limited Partnership*, Case No. PU-07-592, *Bismarck MSA Limited Partnership*, Case No. PU-07-593, *Order Granting Trade Secret Protection* (rel. March 12, 2008) at 5.

2. Is the subject of efforts that are reasonable under the circumstances to maintain the secrecy of the information.[5]

Trade Secret Exhibit A, Items 1 and 2, meet each element of the Confidential Exception under North Dakota Statutes. First, they fall squarely within the definition of a "trade secret." If the Company's competitors obtained the information contained in Trade Secret Exhibit A, Items 1 and 2, the competitors could obtain economic value from the disclosure. Given this potential, the Company closely safeguards the information by prohibiting employee disclosure and restricting access to the information. Second, the information in Trade Secret Exhibit A, Items 1 and 2, is "of a privileged nature" because "disclosure of the information is likely ... to cause substantial harm to the competitive position of the person from whom the information was obtained."[6] The Company would be substantially harmed if the information in Trade Secret Exhibit A, Items 1 and 2, were made public. Finally, the information in the Confidential Exhibits has not previously been disclosed.

[5] N.D.C.C. § 44.04-18.4.
[6] *See* N.D. Op. Atty. Gen. L-77, 1998 WL 1058291 (June 17, 1998).

IV. CONCLUSION

The Company respectfully requests that Trade Secret Exhibit A, Item 1, be held confidential pursuant to N.D.C.C. § 44-04-18 *et seq.*

Dated: September 2, 2017

Respectfully submitted,

By /s/ Pamela L. Hintz

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